

§ 35.4075

40 CFR Ch. I (7–1–00 Edition)

§ 35.4075 Pre-award costs.

(a) Grant funds may not be used to pay costs incurred prior to award of the TAG, except as provided in paragraph (b) of this section.

(b) Necessary and reasonable costs of incorporation, if incurred for the sole purpose of complying with this subpart, will be eligible pre-award costs and may be charged to the TAG or count toward the matching funds requirement described in § 35.4085(a)(2).

§ 35.4080 Method of payment.

All grant recipients shall be reimbursed for grant-related eligible, allocable, allowable, and reasonable costs up to the amount of the TAG which have been incurred and which the recipients are currently and legally obligated to pay. Recipients may submit monthly or quarterly requests for reimbursement to the Agency on SF-270—Request for Advance or Reimbursement, or the appropriate State form if the State is administering the TAG Program. Costs incurred greater than \$500 may be submitted monthly.

§ 35.4085 Grant limitations.

TAGs will be awarded subject to the following limitations:

(a) The recipient must contribute 20 percent of the total costs of the TAG project, except as provided in § 35.4090(b).

(1) Absent specific statutory authority, no Federal funds may be included in the matching share.

(2) To meet the matching funds requirement, the recipient may use cash and/or in-kind contributions.

(b) The TAG award will not initially exceed \$50,000 for a single recipient, except in the case of a single application covering multiple sites.

(c) Not more than one TAG may be awarded for any site.

(d) Administrative costs of the grant may not exceed 20 percent of project costs. Administrative costs may include, but are not limited to, paying an individual(s) to administer the grant.

§ 35.4090 Waivers.

(a) Waivers of the \$50,000 per recipient limit may be granted under either or both of the following circumstances:

(1) *Multiple sites.* In order to reduce the administrative burden to a recipient group where there are several eligible sites geographically close to each other, the limitation that a single recipient may not receive more than \$50,000 may be waived by the Agency (e.g., 3 sites × \$50,000 = grant of \$150,000).

(2) *Complex sites.* The Award Official may waive the \$50,000 per recipient limit if the recipient group demonstrates that the site is especially complex and that the following criteria have been met:

(i) Site(s) characteristics indicate that due to the nature or volume of the site-related information for review, additional funds are necessary;

(ii) The recipient's management of any previous TAG award(s) was satisfactory and that costs incurred under the previous award are allowable and reasonable; and

(iii) No recipient group may receive more than \$100,000 in TAG awards for any one site.

(b) Waivers of the Matching Funds Requirement. The Award Official may waive all or part of the recipient's matching funds requirement only after establishing that:

(1) There is a need for a waiver because providing the "match" would constitute an unusual financial hardship;

(2) A good faith effort at raising the "match," including obtaining in-kind services, has failed; and

(3) The waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

(c) Where a TAG recipient subsequently obtains a waiver of the matching funds requirement, the grant agreement must be amended. (See 40 CFR part 30, subpart G.)

(d) No waivers of the matching funds requirement will be granted by the Agency once the Record of Decision has been issued at the last operable unit at the site.

§ 35.4100 Disputes.

(a) If the Agency administers the TAG Program, the Agency shall review disputes between Agency officials and

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the applicant or recipient in accordance with its dispute resolution procedures set forth at 40 CFR part 30, subpart L.

(b) If the State administers the TAG Program, any applicant or recipient who has been adversely affected by a State's action or omission may request Agency review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or recipient, must include notice of the right to request Agency review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Agency review.

(1) Requests for Agency review must include:

- (i) A copy of any written State decision;
- (ii) A statement of the amount in dispute;
- (iii) A description of the issues involved; and
- (iv) A concise statement of the objections to the State decision.

(2) The request must be filed by registered mail, return receipt requested, within 30 days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Agency shall determine whether the State's review is comparable to a Dispute Decision Official's (DDO) review pursuant to 40 CFR part 30, subpart L. If the State's review is comparable, the Regional Administrator will conduct the Agency's review of the State's decision. If the State's review is not comparable, an Agency DDO will review the State's decision and issue a written decision. If the Agency DDO issues a decision, the applicant or recipient may request a Regional Administrator's review of the decision. The applicant or recipient may request an EPA Assistant Administrator review of a Regional Administrator's decision pursuant to subpart L.

§ 35.4105 Record retention and audits.

(a) *Records and audit-recipient.* (1) Each recipient shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the TAG project, and shall comply with the terms and conditions of the grant agreement.

(2) Such records shall be retained for ten (10) years from the date of the final Financial Status Report, or until any audit, litigation, cost-recovery, and/or any disputes initiated before the end of the 10-year retention period are settled, whichever is longer. A recipient must obtain EPA's prior written approval to destroy records after the record retention period.

(3) Recipients must comply with OMB Circular A-133 "Audits of Institutions of Higher Education and Other Non-profit Organizations," for all grants over \$25,000.

(b) *Records and audit-contractor(s).* (1) The recipient shall require its contractor(s) to keep and preserve detailed records in connection with the contract, reflecting acquisitions, work progress, reports, expenditures, and commitments and indicating their relationship to established costs and schedules.

(2) Contractors must retain records for a period of 10 years after the termination or end of the contract.

(Approved by the Office of Management and Budget under control number 2030-0020)

§ 35.4110 Reports.

(a) *Progress reports.* Each recipient shall submit quarterly progress reports to EPA for the TAG project 45 days after the end of each calendar quarter. Progress reports shall fully describe in chart or narrative format the progress achieved in relationship to the approved schedule, budget, and the TAG project milestones. Special problems encountered must be explained.

(b) *Financial status report.* Each recipient shall submit to EPA a financial status report annually, within 90 days after the anniversary date of the start of the TAG project, and within 90 days after the end of the grant budget period and project. A recipient shall submit to